



Memorandum
Police Department

TO: Mayor and Council

FROM: Brenda Buren, Asst. Police Chief, x8991

DATE: September 10, 2008

SUBJECT: Tempe Citizens' Panel for Review of Police Complaints and Use of Force

At the September 18, 2008 Issue Review Session Assistant Chief John Rush and I would like to brief you on the status of the *Tempe Citizens' Panel for Review of Police Complaints and Use of Force*, and outline some changes we are recommending to improve the panel. Some of the changes are in administrative process, while others will require modifications to the existing ordinance.

The *Tempe Citizens' Panel for Review of Police Complaints and Use of Force* was established via ordinance in July 1999. Since that time, many dedicated citizens have served as members of this important panel. After nearly a decade of experience with the panel, combined with the results of an extensive evaluation of the panel and related processes, we are confident that making some procedural and administrative changes will improve the panel and ensure its long term sustainability. The recommended changes have been reviewed by current and former citizen panel members, as well as representatives from the TOA, TSA, and SEIU employee groups.

Attached is an overview of the substantive changes we are recommending to the ordinance, as well as a draft of the new ordinance.

Background & Recommended Changes

As background, the *Tempe Citizens' Panel for Review of Police Complaints and Use of Force* was established to review:

1. All police shootings and any police incident wherein direct physical force results in serious injury or death. Serious injury is defined as an injury that requires the subject to be admitted to the hospital;
2. The findings of the Police Department's investigation of unsustained, unfounded, or exonerated complaints, when that citizen requests a review of the Police Department's findings. A request for review must be made within thirty (30) days from the date the citizen is notified of the findings of the Police Department's investigation; or
3. Any Police Department incident, at the request of the Chief of Police.

The panel currently consists of fifteen citizen members and three Police members. The Police members include one Police Officer, one Sergeant, and one Assistant Chief (identified as Commander in original ordinance). Each time a sub-panel is convened to review a specific incident, five citizen members are selected from the larger panel of fifteen to participate on the sub-panel with the three Police representatives. An affirmative vote of five members is required to pass any matter before the sub-panel.

Below are the substantive recommended changes to the ordinance.

Sec. 2-285 (a)

- ❑ Remove the Assistant Chief as a voting member of the panel. In the original ordinance, the Assistant Chief responsible for the Personnel Services Bureau was a voting member on the panel. We recommend that the Assistant Chief be removed as a voting member of the panel to avoid any potential conflict of interest between the Assistant Chief's role as a panel member and role as a Department executive staff member. The Assistant Chief's 'vote' has never impacted the outcome of a panel; however, we would like to avoid any potential for conflict in the future.
- ❑ Increase the number of Police Officers and Police Sergeants on the larger panel from two to four. Each time a sub-panel is convened, only one of the two Police Officers and one of the two Police Sergeants will be selected to sit on a sub-panel. The purpose of this change is to ensure that a broader pool of Police participants are eligible to serve on a sub-panel, and to ensure that if any conflict of interest or scheduling problem exists with a member there is a backup available. This change does not impact the number of Police representatives participating on a sub-panel.

Sec. 2-285 (b)

- ❑ Increase the number of citizens participating on a sub-panel from five to six. This change is recommended to ensure that citizens have more participation, and in essence, replaces the Assistant Chief as another voting member on a sub-panel.

Sec. 2-285 (c)

- ❑ Provide for the Chief to appoint an Assistant Chief to serve as a non-voting facilitator for sub-panels. Given that we are recommending that an Assistant Chief no longer be a voting member, we still need that position to fulfill the role of sub-panel facilitator.

Sec. 2-285 (i)

- ❑ Include parameters for citizen panel member participation in the ordinance rather than solely on the application form. The purpose for this change is to ensure that the Council approve any changes in the restrictions for citizen participation. Without inclusion in the actual ordinance the parameters could be changed administratively. No items have been changed administratively since the inception of the panel.
- ❑ Include two additional parameters for citizen member participation. These include that citizen panel members may not serve if they are:

(4) A current or former Tempe Police Department employee; and

(5) A former Police Department employee (of any agency) within five (5) years of their police employment.

The purpose of these changes is to ensure that this remains a citizen focused panel. Given that there are Police participants on the panel, the inclusion of additional individuals with police ties or backgrounds may impact the larger panel.

ORDINANCE NO. 2008.____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING CHAPTER 2, ARTICLE V, DIVISION 12, OF THE TEMPE CITY CODE, RELATING TO TEMPE CITIZENS' PANEL FOR REVIEW OF POLICE COMPLAINTS AND USE OF FORCE BY AMENDING SECTIONS 2-285 AND 2-288; AND REPEALING SECTION 2-287.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That Section 2-285 of the Tempe City Code is hereby amended to read as follows:

Sec. 2-285. Established; composition.

(a) There is hereby established a Tempe citizens' panel for review of police complaints and use of force ("panel") to be composed of fifteen (15) citizen members and ~~three (3)~~ FOUR (4) Police Department members CONSISTING OF TWO (2) SERGEANTS AND TWO (2) LINE LEVEL OFFICERS, WHO SHALL SERVE FOR A TWO (2) YEAR TERM. THE POLICE DEPARTMENT MEMBERS SHALL BE SELECTED BY THE CHIEF.

(b) When functioning as a review sub-panel as described in § 2-288, each sub-panel shall consist of ~~five (5)~~ SIX (6) citizen members and ~~three (3)~~ TWO (2) Police Department members CONSISTING OF ONE SERGEANT AND ONE LINE LEVEL OFFICER. The citizen members of each sub-panel shall be selected by the city manager. THE POLICE DEPARTMENT MEMBERS OF EACH SUB-PANEL SHALL BE SELECTED BY THE CHIEF.

(C) THE CHIEF SHALL APPOINT AN ASSISTANT CHIEF TO SERVE AS THE NON-VOTING CHAIRPERSON/FACILITATOR OF THE PANEL AND EACH SUB-PANEL.

(e D) This panel shall act in an advisory capacity to the chief of police and the city manager.

(d E) The fifteen (15) citizen members of the panel shall be selected from residents of the city. The mayor will make three (3) selections and each council member will make two (2) selections.

(e F) The term of office of citizen members shall be for three (3) years and shall commence on the first day of January of each year and end on the 31st day of December, three (3) years thereafter, except for the initial citizen members of the panel. Such terms shall be staggered so that the term of no more than five (5) citizen members shall conclude in any given year.

(f G) Citizen members of the panel may not serve more than two (2) complete consecutive terms. Any CITIZEN MEMBER vacancies shall be filled for the remainder of the unexpired term ~~of the citizen member whose office is vacant~~ in the same manner as such citizen member received original appointment.

(g-H) The city manager may for cause remove any citizen member of the panel.

(I) PROSPECTIVE CITIZEN PANEL MEMBERS MAY NOT SERVE IF ANY OF THE FOLLOWING APPLY:

- (1) HAVE BEEN ARRESTED BY THE TEMPE POLICE DEPARTMENT WITHIN THE LAST FIVE (5) YEARS;
- (2) HAVE ANY FELONY CONVICTIONS;
- (3) ARE RELATED DIRECTLY TO A TEMPE POLICE DEPARTMENT EMPLOYEE;
- (4) A CURRENT OR FORMER TEMPE POLICE DEPARTMENT EMPLOYEE;
- (5) A FORMER POLICE DEPARTMENT EMPLOYEE (OF ANY AGENCY) WITHIN FIVE (5) YEARS OF THEIR POLICE EMPLOYMENT; OR
- (6) ARE AN ADVERSARY PARTY, A REPRESENTATIVE OF AN ADVERSARY PARTY, OR HAVE ANY FINANCIAL LITIGATION OR CLAIM AGAINST THE CITY RELATING TO THE POLICE DEPARTMENT OR ANY INDIVIDUAL IN THE POLICE DEPARTMENT.

Section 2. That Section 2-287 of the Tempe City Code is hereby repealed.

Sec. 2-287. Police department members designated.

~~(a) The chief of police shall select three (3) police department employees to serve as members of the panel.~~

~~(b) The three (3) police members shall consist of one division commander, who shall serve for an indefinite term, one first line supervisor and one line officer, both of whom shall serve for a two (2) year term.~~

~~(c) The appointed division commander shall serve as chairperson of the panel and each sub-panel.~~

Section 3. That Section 2-288 of the Tempe City Code is hereby amended to read as follows:

Sec. 2-288. Powers and duties.

(A) The Tempe citizens' panel for review of police complaints and use of force shall have the following powers and duties:

- (1) To ~~establish~~ REVIEW such rules and regulations as it deems necessary for its government and for the faithful performance of its duties; ~~AND to set a time for meetings which shall be held as needed if there is business to transact; to establish the manner in which special meetings shall be held and the notice to be given thereof; and~~
- (2) To provide ~~that five (5)~~ SIX (6) members of ~~each~~ THE PANEL FOR EACH SUB-PANEL. A TOTAL OF SIX (6) MEMBERS OF THE sub-panel (OFFICERS AND CITIZENS) shall constitute a SUB-PANEL quorum. The affirmative vote of five (5) members of each sub-panel shall be required for passage of any matter before the panel.
- ~~(2) To require attendance of the members at regular meetings and to provide that absence from three (3) consecutive regular meetings without consent of the panel shall be deemed to constitute the resignation of such member and such position shall thereupon be deemed vacant;~~
- ~~(3) To meet in sub-panels selected by the city manager and conduct a review of the record of the following:~~

(B) THE SUB-PANEL SHALL HAVE THE FOLLOWING POWERS AND DUTIES:

- ~~a~~-(1) TO REVIEW all police shootings and ANY police incidents wherein direct physical force by the police results in serious injury or death. Serious injury is defined as an injury that requires the subject be admitted into a hospital;
 - ~~b~~-(2) TO REVIEW the findings of the Police Department's investigation of unsustained, unfounded or exonerated citizen complaints, when that citizen requests a review of the Police Department's findings. A request for review must be made within thirty (30) days from the date the citizen is notified of the findings of the Police Department's investigation; or
 - ~~e~~-(3) Any Police Department incident, at the request of the Chief of Police;
- ~~(4)~~(C) After a review of the record, each review panel shall make one of the following findings in a WRITTEN report to the chief of police:
- ~~a~~-(1) Agree with the findings of the Police Department investigation;
 - ~~b~~-(2) Disagree with the findings of the Police Department investigation;

e-(3) Advise the chief of police that further investigation is warranted; or

d-(4) Upon a review of a use of police force incident, the review panel shall make a further finding whether the use of police force was within Police Department policy; and

(5)(D) The panel may make recommendations to the chief of police concerning training programs, revisions of policies or procedures, commendable actions, preventive or corrective measures (except for employee discipline) ~~and community concerns regarding police action and procedures~~ AS IT RELATES TO THE SUB-PANEL FINDINGS OF THE INCIDENT BEING REVIEWED.

Section 4. Pursuant to the Tempe City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2008.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney